

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)
_____)

CC Docket No. 96-98

REPLY COMMENTS OF SBC COMMUNICATIONS INC.
ON THE APPLICATION OF SECTION 251(d)(2)
TO INDIVIDUAL NETWORK ELEMENTS

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EXECUTIVE SUMMARY

SBC Communications Inc. addresses the limiting standards that must guide the Commission in its interpretation of section 251(d)(2) in joint reply comments it is filing with Ameritech, BellSouth, and the United States Telephone Association ("Joint Reply Comments"). In these separate reply comments, SBC addresses the FCC's application of section 251(d)(2) to individual network elements.

Pursuant to the Supreme Court's opinion in *AT&T Corporation v. Iowa Utilities Board*, 119 S. Ct. 721, 735-36 (1999), the Commission must consider the availability of elements outside the ILEC network before ordering unbundling. If an efficient CLEC can self-provision a network element or obtain it from a non-ILEC source, unbundling under section 251(d)(2) is inappropriate and would undermine the objectives of the 1996 Act, which are to promote competition and encourage innovation. These public-interest goals are furthered when CLECs compete against ILECs with their own facilities (or those of a non-ILEC), because it is only then that efficient CLECs can differentiate their products and services, exploit their efficiency advantages over ILECs, and drive down prices and improve quality. It is only when CLECs and ILECs are *not* sharing facilities that robust competition emerges and consumers reap the rewards. Thus, the Commission should not impose a regulatory roadblock in any market where efficient CLECs are *already* competing with their own facilities or those of a non-ILEC against the ILEC.

A determination as to the availability of alternatives to the ILEC network is, therefore, the linchpin of the Commission's decision on whether to order unbundling of a particular network element. Any such determination requires, of course, an empirical evaluation of the relevant market (*i.e.*, an analysis of what efficient CLECs have actually done and what they can do given available inputs and current market conditions).

Despite the importance of this inquiry, most of the CLECs' comments contain only naked

arguments with no factual support. Yet CLECs obviously possess the best information about their own deployment of network elements and their ability to obtain elements from non-ILEC sources. The unwillingness of CLECs to discuss market facts cannot be explained by lack of access to the relevant data. The real reason that the CLEC comments are so long on rhetoric and so short on facts is that any fair presentation and evaluation of the latter commands removal – if not nationally then at least in certain markets under certain conditions – of several network elements from Rule 319.

Loops. The Commission must separately analyze loops in dense wire centers serving large business customers and loops in less populated areas that serve residential customers. In the former market, efficient CLECs unquestionably have a meaningful opportunity to compete. No less than 60 competitors are self-provisioning fiber to large businesses in dense wire centers throughout the country. The competitive success story of these CLECs can hardly be dismissed as irrelevant. Rather, their success is concrete proof of what efficient CLECs can do. Indeed, even commenters advocating the loop UNE, such as AT&T, concede that viable “alternatives now exist” to ILEC loops used by large business customers. Despite attempts by various commenters to divert the Commission’s attention from these market facts, the Commission cannot turn a blind eye to the evidence of *actual* CLEC success in self-providing loops to large business customers in dense wire centers. In these markets, the Commission cannot mandate unbundling because to do so would violate the Court’s command to consider alternatives and apply a meaningful limiting standard.

Even in rural and residential markets, the Commission must fashion a meaningful sunset to account for the rapid growth of alternatives to the ILEC loop. CLEC attempts to diminish the increasing importance of wireless and cable alternatives are belied by the facts. Indeed, the very same commenters who seek to dismiss these alternatives to the loop have elsewhere touted the ability of cable and wireless to substitute for landline loops.

CLEC efforts to include additional network elements under the guise of the expanding the loop definition are meritless. Several commenters ask the Commission to include DSLAMs and other electronic equipment in the definition of loops, but these items are – from both a technical and economic perspective – radically different from the loop itself. Moreover, this electronic equipment is, as CLECs themselves concede, readily available on the open market to CLECs and ILECs alike.

Switching. No CLEC commenter that seeks to make switching a UNE even attempts to grapple with the reality of competition in the provision of local switching today. More than 150 CLECs have already deployed more than 700 switches in hundreds of local markets throughout the country – and that number is growing every day. To keep switching on the list of UNEs, the Commission would have to conclude that the 150 CLECs self-deploying switches are not really efficient competitors but irrational actors getting by on blind luck and that other CLECs cannot be expected to follow the same course. Obviously, such a conclusion would lack any evidentiary support – let alone substantial evidence.

Faced with these insurmountable facts, several commenters again try to distract the Commission's attention from its duty to analyze the empirical evidence. They invent difficulties in deploying switches (unsupported by facts) that are contradicted by CLECs' actual experience. They claim that switching should be a UNE because no wholesale market for switching exists – even though the lack of a wholesale market for switching says *nothing* about a CLEC's ability to self-provide without access to the ILEC network and even though the Supreme Court requires the Commission to consider self-provision as a viable alternative to the ILEC network.

Ultimately, CLECs must fall back on bootstrapping in their attempt to keep switching as a UNE. They point to the alleged lack of competition for *other* elements to support their claim that switching should be unbundled. As the Joint Reply Comments explain, the Commission must

examine each element independently to comply with the Supreme Court's opinion and the 1996 Act.

Signaling. Commenters seeking to keep signaling on the list of UNEs have no rejoinder to the market facts, which plainly show that competitive signaling networks are widely available. Instead, these commenters are forced to claim (without factual support) that these alternatives are inferior to the ILEC signaling network. The CLECs' own market behavior undercuts this argument; even with unbundled access to ILEC signaling, CLECs are purchasing signaling from the numerous wholesalers and competitors that are offering it.

Interoffice Transport. The CLECs seeking to keep interoffice transport as a UNE concede that there are alternative providers of dedicated transport in multiple areas across the country and that these providers offer transport on a par with the ILECs. In fact, the only argument these CLECs have to support transport as a UNE in *all markets* is their claim that interoffice transport is not yet available in *some markets*. This "least common denominator" approach cannot be squared with the Supreme Court's opinion, the purposes of section 251(d)(2), or the overall goals of the 1996 Act. To accept this argument, the Commission would have to conclude – contrary to the facts – that deployment of 108,000 route-miles of fiber in 289 cities by over 50 CLECs is incapable of repetition by other efficient CLECs, even in markets where competition is already thriving. The FCC cannot make such a counterfactual finding; thus it cannot order interoffice transport to be unbundled where actual CLEC provision conclusively demonstrates that alternatives exist.

The Commission cannot, moreover, include dark fiber in the definition of interoffice transport or loops. Dark fiber is widely available in an ever-expanding wholesale market, and actual CLEC success obtaining and deploying dark fiber undercuts the claims of commenters that they are impaired without access to ILEC dark fiber.

Shared transport cannot be a UNE, as some commenters request, because shared transport

per se cannot even be defined as an “unbundled” network element. Rather, shared transport is a combination of switching and transport. To obtain shared transport, CLECs would have to establish that *both* switching and transport meet the standards of section 251(d)(2). But CLECs cannot make such a showing in many (if not all) geographic markets. Moreover, where switching and dedicated transport are available, CLECs are not impaired without shared transport because dedicated transport already gives efficient CLECs a meaningful opportunity to compete.

Operator Services and Directory Assistance. There are already over 30 CLECs providing their own OS and DA services or reselling the services of non-ILECs, including numerous wholesalers. And more CLECs can readily enter this market. In addition to wholesale alternatives, CLECs can readily self-provision because the necessary inputs are widely available on the open market. Commenters seeking to retain the OS/DA UNE have no response to these market facts. Indeed, several commenters concede OS/DA should not be a UNE and do not ask for it. Those that do make unsubstantiated claims that non-ILEC alternatives are inferior. The fact that numerous CLECs – and ILECs – rely on non-ILEC providers for OS/DA conclusively repudiates this claim.

Advanced Services. CLEC comments seeking UNEs for advanced services are – once again – devoid of market facts. This is unsurprising given the amazing success of CLECs in providing advanced services, not to mention the express findings made by this Commission a mere four months ago that there is no incumbency in this market and that CLECs currently rank ahead of ILECs in deploying broadband to residential customers.

Platforms. Some of the commenters ask the Commission to include extended loops (a combination of loops, switching, and interoffice transport) in its list of UNEs. As discussed in the Joint Reply Comments, the attempt to obtain “combined” elements where the individual elements do not satisfy section 251(d)(2) cannot be reconciled with the Supreme Court’s decision and the 1996 Act.

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**REPLY COMMENTS OF SBC COMMUNICATIONS INC.
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SBC Communications Inc. (SBC) is filing joint reply comments with Ameritech, BellSouth, and the United States Telephone Association (“Joint Reply Comments”) on the limiting principles that must guide the Commission in its interpretation of section 251(d)(2). In these separate reply comments, SBC addresses the Commission’s application of section 251(d)(2) to individual network elements.

Whatever standard the Commission adopts pursuant to section 251(d)(2), the Supreme Court has mandated that the Commission must consider the availability of elements outside the ILEC network. *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 736 (1999). That is, in determining whether the “necessary” and “impair” standards of section 251(d)(2) are satisfied, the Commission must analyze CLECs’ ability to self-provision a network element or to purchase a network element from a non-ILEC provider. *Id.* at 735.

This analysis is crucial to furthering the 1996 Act’s goals of stimulating robust competition and encouraging innovation. Mandating unbundling when efficient CLECs can use their own facilities or the facilities of non-ILEC providers would destroy the incentive of those CLECs to

compete with their own facilities, because they can avoid sunk costs and risks by using the ILEC network. Excessive unbundling also dampens the incentives of all carriers to innovate. With a forced-sharing rule in place, ILECs lack the incentive to innovate because they bear all the risk but must share the reward. And CLECs will opt to sit on the sidelines, waiting to see what ILEC technologies and facilities prove successful; they will not bear the risk of innovation when they can free-ride off the ILEC network.

These disincentive effects impede the evolution of true competition. It is only when efficient CLECs use their own facilities or those of a non-ILEC that prices will fall, quality will rise, and innovation will emerge. Thus, it is only when CLECs are competing with their own facilities (or the facilities of a non-ILEC) that consumers benefit and the 1996 Act's public-policy goals are furthered. It is, therefore, crucial that the Commission mandate unbundling only where efficient CLECs do not have a meaningful opportunity to compete – either through self-provision or through the use of non-ILEC network elements. Indeed, that is why Congress placed just such a limit on unbundling in section 251(d)(2).

Although the consideration of alternative sources for UNEs requires an empirical evaluation of the relevant market, most of the CLECs' comments are devoid of any factual analysis. This appears to be part of a deliberate CLEC strategy to convince the Commission to readopt and expand the existing UNE list without undertaking a serious market study. For the reasons given in the Joint Reply Comments, that is not a course the Commission can follow.

Fortunately, the Commission does have a large factual record before it. The UNE Fact Report is a detailed look at competitive alternatives for each network element. If anything, this report underestimates CLECs' presence in the market because it is largely restricted to publicly available information. The CLECs themselves have the best information about their own deployment and business plans, but they aren't talking. That in itself should be sufficient to create

an inference that alternatives to ILEC UNEs are in fact widespread. Certainly, the UNE Fact Report demonstrates that actual market conditions require the Commission to revise its prior list of UNEs. If a CLEC is obtaining an element in a geographic market from a non-ILEC source, that is conclusive evidence that an efficient competitor has a meaningful opportunity to compete.¹

Without looking at or acknowledging the evidence, many commenters predict that CLECs would face enormous difficulties without access to ILEC network elements. But they fail to explain the enormous success CLECs are *already* enjoying without relying on ILEC network elements. CLECs are deploying their own switches, signaling networks, and transport fiber – and even their own loop fiber to business customers in dense wire centers. They are obtaining operator services (OS) and directory assistance (DA) from non-ILEC providers (or providing OS/DA themselves), and they are among the leaders in the advanced services market. The commenters asking for these elements as UNEs have no response to this overwhelming evidence of actual competition.

I. Loops

As SBC and others pointed out in their comments, CLECs have been enormously successful in reaching large business customers with their own fiber networks. They have deployed almost 30,000 miles of fiber within the top 50 MSAs, and CLECs have deployed fiber in all but 15 of the MSAs ranked between 51 and 150. CLEC fiber already reaches approximately 15 percent of all commercial office buildings in the country. In the areas that CLECs serve, they have captured between 8 and 18 percent of all business lines in dense wire centers with

¹ Although elements should not be UNEs under these circumstances pursuant to section 251(d)(2), SBC will still honor its existing agreements with CLECs even if an element is determined not to be a UNE. SBC also remains fully committed to the business-to-business negotiation process to arrive at an appropriate interconnection agreement that satisfies the needs of our CLEC customers. In fact, SBC has already negotiated hundreds of agreements under the 1996 Act, and only a tiny percentage of them have been subject to arbitration.

collocation. *See* UNE Fact Report at III-17.

Commenters do not – nor could they – dispute the ability of CLECs to use alternatives to the ILEC loop to reach large business customers in dense wire centers. *See, e.g.*, AT&T at 15 (conceding that “[a]lternatives now exist” for loops used by the large business customers); MCI Levine/McMurtrie Decl. at ¶ 10 (MCI WorldCom “self-provision[s] loops to its major business customers, and . . . use[s] its own facilities to provide end-to-end on-net services between the various locations of its major customers.”).

Instead, commenters attempt to argue that, because competitive loop alternatives are not yet widely available in some areas, loops should be made UNEs everywhere (even in markets where there are alternatives). For example, AT&T urges the FCC to “focus on mass-market entry.” AT&T at 62. Nowhere is AT&T’s mass-market rhetoric more misplaced. Loops, more so than any other network element, require a focused market-specific inquiry that accounts for enormous cost differences in the provision of loops to different kinds of customers (*e.g.*, business and residential) in different geographic locations (*e.g.*, urban and rural). Asking the Commission to ignore these enormous market differences is, in effect, asking the Commission to flout the Supreme Court’s command to consider alternatives and to apply a limiting principle consistent with the 1996 Act. It is also asking the Commission to scorn reality. To accept the arguments of AT&T, MCI, and the others, the Commission would have to conclude that AT&T and MCI – as well as 58 other CLECs self-provisioning fiber to large businesses – are not efficient carriers but competitive anomalies.² Obviously the CLECs themselves know this not to be true – their competitive success is hardly happenstance. Indeed, AT&T and MCI purchased Brooks, MFS, and TCG precisely because they are efficient CLECs making economically rational, and

² New Paradigm Resources Group, *1999 CLEC Report*, at Ch. 6, pp. 7-8 (10th ed. 1999) (“1999 CLEC Report”).

successful, decisions. And there is nothing to stop other efficient CLECs from following the same course.

The Commission must also take into consideration the rise in alternatives to the ILEC loop to the "mass market." As the Commission itself has already acknowledged, cable and wireless alternatives are rapidly emerging as viable options for CLECs to serve residential and small business customers.³ Indeed, even the commenters who seek to dismiss these alternatives have elsewhere observed the ability of wireless and cable to replace the ILEC loop. For example, although AT&T now claims that "CLECs presently have no practical alternative to incumbent LEC loops," AT&T at 67, this statement is in stark contrast to recent statements made by AT&T itself. Thus, while AT&T's lawyers argue that mobile wireless services do not substitute for landline, its own chief executive has stated that the two have become such close substitutes that, "[p]retty soon, someone's going to wonder why that [wireline] phone is sitting there."⁴ AT&T's advertisements boast that AT&T's new Digital One Rate is so low that it "could make your wireless phone your only phone."⁵

AT&T and other commenters point out limitations to fixed wireless services (*e.g.*, it will take years to deploy, at significant cost, and may not support high-speed services). But AT&T,

³ See, *e.g.*, Third Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 13 FCC Rcd 19746, App. F at F-1 (1998) (Appendix to Third Report published at 1998 FCC LEXIS 2816, at *216) (recognizing that fixed wireless offers "a replacement for the 'last mile' of copper wire"); Memorandum Opinion and Order, *Application of 360 [Degrees] Communications Company Transferor, and ALLTEL Corporation Transferee for Consent to Transfer Control of 360 [Degrees] Communications Company and Affiliates*, DA 98-2637, Report No. LB-98-50, 1998 WL 906754 [¶ 33] (1998) (acknowledging that the "prospects for consumers substituting for wireline services by using mobile telephone carriers appear to be improving"); Fifth Annual Report, *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 13 FCC Rcd 24284, 24321 [¶ 59] (1998) (finding that "the number of locales where MSOs offer cable telephony has increased in the last year, and it is available to a large number of customers in many markets").

⁴ *AT&T Wireless Joins Sprint PCS in Single-Rate Offer, But Adds Contracts*, Communications Daily, May 8, 1998, at 7-8.

⁵ Ad for AT&T Digital OneRate, N.Y. Times, Apr. 5, 1999, at A11.

MCI, Sprint, and Qwest together have staked several billion dollars in the past few months on fixed wireless technology. And every major fixed wireless provider - including AT&T itself in more candid moments - agrees that this technology is a viable alternative to landline. AT&T notes that its own fixed wireless properties allow AT&T to bring "service to customers that cannot be served economically with fiber optics."⁶ Wireless One, a fixed wireless provider recently acquired by MCI, described its service as providing "affordable alternatives to traditional local loop services for the 'last mile' connection."⁷ WinStar notes that its "Wireless Fiber" offers "a quick and cost-efficient solution for extending the reach of an existing fiber ring providing local transport."⁸ Teligent CEO Alex Mandl notes that, "[t]oday, I think everybody in the industry recognizes that fixed-wireless networks and point-to-multipoint networks will be a very important part of how the industry will evolve."⁹ Sprint recently acquired four fixed wireless providers, and its CEO, William Esrey, has stated that as these properties give Sprint "a wireless alternative to deliver advanced communications services to our customers . . . we will be able to greatly extend the reach of Sprint's Integrated On-Demand Network to consumers and small businesses."¹⁰

AT&T's discussion of cable telephony is understandably more constrained by the facts - as AT&T has staked more than \$90 billion on this technology as a full competitor to the ILECs' network. AT&T's only complaint here is that two-way cable telephony will not serve 100 percent of the population and that, even if it did, "consumers must be convinced to purchase the service."

⁶ Testimony, Gail Garfield Schwartz, Vice President-Public Policy and Government Affairs Teleport Communications Group Inc., House Judiciary Antitrust Enforcement Agencies, November 5, 1997.

⁷ PR Newswire, *Wireless One Launches New Business Data and Internet Technology*, July 22, 1998.

⁸ WinStar Communications, Carrier Services Homepage: <<http://www.winstar.com/indexCarrServ.htm>>.

⁹ Nikki Swartz, *InTelligent Challenger*, Teligent, Inc., Mar. 15, 1999, available at: <<http://www.teligent.com>>.

¹⁰ Russ Robinson, *Sprint Agrees to Acquire American Telecasting, Inc.*, Sprint Communications Co., April 27, 1999, available at: <<http://www.sprint.com/Stemp/press/releases/9904/9904270793.html>>.

AT&T at 71. Both points are quite obviously absurd. To the extent that cable provides a second two-way wire into the home – as AT&T admits 26 percent of TCI's facilities already do – there simply is no legitimate basis for treating one of these wires differently than the other (that is, requiring one to be provided at cost-based rates to competitors, while the other remains in the exclusive control of an entrenched monopolist). AT&T's trepidation that consumers might not be convinced to purchase cable telephony is undercut by its own \$90 billion bet that consumers will jump at the chance for cable telephony (and all the services that can be bundled along with it). AT&T itself has promised that this will occur. TCI President Leo Hindery has stated that, “[w]ithin 5 years, 100% of homes passed by AT&T will be able to take . . . Internet protocol (IP) telephony,” and thirty percent actually will subscribe.¹¹ And, in fact, Congress anticipated “meaningful facilities-based competition”¹² from cable; in the Conference Report to the 1996 Act, Congress noted that “initial forays of cable companies into the field of local telephony . . . hold the promise of providing the sort of local residential competition that has consistently been contemplated.”¹³ Thus, nothing in the comments undercuts SBC's claim that the Commission must, at the very least, adopt sunsets that account for the enormous advances in wireless and cable. See SBC at 28-30.

Several commenters – betting that, at least for now, residential loops will be unbundled¹⁴ – urge the Commission to adopt additional UNEs under the guise of expanding the definition of a “loop.” Several commenters ask the Commission significantly to expand the definition of a local loop to include a vast array of electronics and other kinds of equipment such as DSLAMs, inside

¹¹ *Hindery Denies AtHome-Roadrunner Talks, Cable Fault in Rate Hikes*, Communications Daily, Mar. 29, 1999.

¹² H.R. Conf. Rep. No. 104-230, at 148 (1996).

¹³ *Id.*

¹⁴ Second Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions in*

wiring, and multiplexers. *See, e.g.*, MCI at 45, 50; AT&T at 72-82. They claim that such equipment performs the same technical functions as local loops and has the same natural monopoly properties. *See, e.g.*, MCI at 45; AT&T at 77. But, from both a technical and economic perspective, most of the items that commenters wish to make part of the loop are radically different from the loop itself.

For example, AT&T attempts to equate a DSLAM with “transmission-enhancing equipment” such as “load coils . . . or other multiplexing equipment that allows greater concentration of loop traffic.” AT&T at 77. A DSLAM is nothing like these items. The primary function of a DSLAM is to separate voice and data traffic onto circuit and packet networks.¹⁵ This function occurs in the central office itself, not along the loop plant where load coils are deployed. And the economics of deploying equipment in a central office – where thousands of customer lines are aggregated – are completely opposite of those of a loop, which serves a single customer. The economics are radically different for yet another reason; DSLAMs are an entirely new piece of equipment, which ILECs have not deployed ubiquitously, or even in greater quantities than CLECs themselves.

MCI claims that, “[u]nless ILECs are required to make their DSLAMs available as part of the loop, CLECs will be unable to provide ubiquitous DSL service, and notably will not be able to serve most rural areas.” MCI at 50. Though delivering high-speed services to rural markets is an important goal that the FCC should promote, unbundling DSLAMs for CLECs will not accomplish it. CLECs have long eschewed rural markets, focusing instead on high-end business

the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-70 [¶ 32] (rel. Apr. 16, 1999).

¹⁵ Memorandum Opinion and Order, *Bell Atlantic Telephone Cos., Bell Atlantic Tariff No. 1, Bell Atlantic Transmittal No. 1076*, 13 FCC Rcd 23667 (1998) (DSLAM “diverts voice traffic to a voice switch and directs data traffic over dedicated data connections”); Memorandum Opinion and Order, and Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, 24027 [¶ 30] (1998) (“The DSLAM sends the customer's data traffic

customers.¹⁶ In any event, DSLAMs, as discussed further in the advanced services section, *infra*, are as available to CLECs as ILECs.

Many commenters ask the FCC to define a loop to include intra-building wiring. *See, e.g.*, Teligent at 2-13; ALTS at 70-72; Choice One Communications/Network Plus/GST Telecom/CTSI/Hyperion Telecom (“CLEC Joint Commenters”) at 23-25; Level 3 at 20-22; KMC at 22-23. They specifically complain about the ability to obtain access to such wiring in situations where the CLEC deploys its own loop to a multi-tenant building that contains multiple demarcation points (one for each tenant) and in which the ILEC owns the riser cable leading to each demarcation point.¹⁷ As an initial matter, unbundling each tenant’s portion of the riser cable from that tenant’s loop may harm service to other tenants because the riser cable is a shared resource. Indeed, this was the FCC’s rationale for permitting building owners to elect multiple demarcations in the first place.¹⁸

More to the point, there are far more practical alternatives to unbundling for CLECs to obtain access to intra-building wiring. In addressing the issue of access to tenants of multiple-tenant facilities in various of its regions, SBC has been willing to eliminate multiple demarcation points in favor of a single demarcation point, which commenters admit would remedy their concerns. *See, e.g.*, Teligent at 3; Optel at 10. Indeed, SBC’s tariffs in these regions provide the

(combined with that of other xDSL users) to a packet-switched data network.”).

¹⁶ *See* Joint Reply Comments at 14-15.

¹⁷ To the extent that a CLEC takes an unbundled loop from SBC, SBC provides the riser cable as part of the local loop. But where a building owner has taken ownership of the riser cable/intrabuilding wiring, SBC has gained access to such wiring by negotiating individual contracts with owners and landlords, and therefore is not in a position to offer such wiring to CLECs, which are free to negotiate their own contracts.

¹⁸ Report and Order and Further Notice of Proposed Rulemaking, *Review of Sections 68.104 and 68.213 of the Commission’s Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, 5 FCC Rcd 4686, 4692-93 [¶¶ 30-31] (1990).

procedures for such a change, which any property owner can make on request.¹⁹ CLECs are free to offer property owners incentives to make this change, and to negotiate with property owners to deploy parallel inside wiring. Thus, the CLECs' true grievance is with property owners, not ILECs, and that grievance cannot reasonably be addressed by making intrabuilding wiring a UNE.

II. Switching

CLEC commenters are predictably divided on the issue of unbundled local switching. Facilities-based CLECs such as Focal, Cox, MGC, and Level 3 agree with SBC and other ILECs that CLECs do not need access to unbundled local switching. They know that CLECs can self-provide switches, because they have already done so on a broad scale. *See, e.g.*, Focal at 2; Cox at 2-3; MGC at 3; Level 3 at 23-24; *see also* Ohio PUC at 7 (“the switch is an item that does not meet the ‘impair’ standard”). Some less-developed CLECs – such as Excel, KMC Telecom, and Prism – dispute these claims, as do AT&T and MCI. Though AT&T and MCI together have deployed more than 190 switches in more than 115 cities,²⁰ they nevertheless argue that ILECs should unbundle local switching in order to support “mass market” entry strategies. AT&T at 86-88, 92, 94, 98; MCI at 52-53.

But the CLEC commenters that seek to make switching a UNE completely ignore the reality of competition in the provision of local switching today. More than 150 CLECs have already deployed. More than 700 switches in hundreds of local markets, and many more switches are being deployed.²¹ These switches serve over one-third of all BOC/GTE rate exchange areas,

¹⁹ *See, e.g.*, General Exchange Tariff, § 23 Subsections 14.1.2, 14.4.5(A), 14.7.1, available at: <<http://www.sbc.com/PublicAffairs/PublicPolicy/Tariffs/Texas/get.pdf>>.

²⁰ Bellcore, TR-EQP-000315, Local Exchange Routing Guide (Mar. 1, 1999) (“March 1999 LERG”).

²¹ AT&T's Pfau affidavit claims that CLECs have deployed “under 600 [switches] at most.” AT&T Pfau Aff. at ¶ 12. Although Pfau uses the LERG for this estimate – the same source used in the UNE Fact Report – he relies on the August 1997 edition, which is now nearly two years out of date. The UNE Fact Report at I-1 counts 724 CLEC switches as of March 1999, which is consistent with ALTS's own estimate of 676 switches as of December 1998. Pfau makes other errors as well. He claims that 35 percent of the

as evidenced by the NXX/LNP analysis used in the UNE Fact Report.²² This includes only traditional voice switches, not the numerous alternatives that CLECs also are using, such as wireless switches, packet switches, long-distance switches, and PBXs.

CLECs are self-deploying switches *even with ILEC switching available at TELRIC prices*. For example, since the 1996 Act was passed, “not one CLEC has purchased unbundled switching from U S WEST.” U S WEST at 43 (emphasis omitted). In Ohio, no CLEC is currently purchasing the unbundled switching element. *See Ohio PUC at 7-8* (arguing that, “[s]ince no CLEC has purchased the stand-alone unbundled local switch, yet facilities-based CLECs with local services are operational, the Ohio Commission believes it would be difficult for a CLEC to argue that, unless the ILEC provides the switch, the CLEC[']s ability to provide service is ‘impaired’”).

To overcome these facts, the Commission would have to conclude that all of the CLECs self-deploying switches – and there are more than 150 CLECs that are doing so²³ – are not viable competitors but are instead economically irrational actors getting by on blind luck and coincidence. The Commission would have to find that these 150 some CLECs are “unique” and that other CLECs cannot be expected to follow the same course.

Instead of attempting to confront these obviously insurmountable facts, several CLEC commenters try to divert attention from them by exaggerating the difficulties in deploying new

switches are located in New York and California. According to the March 1999 LERG, however, only 105 of the 724 CLEC switches are in New York and California – roughly 14 percent, less than half of Pfau’s claim.

²² One CLEC, Focal, echoes the NXX analysis used in the UNE Fact Report. Focal states in its comments: “[The FCC should declare] that unbundled switching will not be available in areas where competitors have demonstrated the ready availability of switching through self-provisioning. The best and simplest test of switch self-provisioning (determined geographically at the level of NXX V & H coordinates) is the presence of a CLECs’ NXXs in the LERG.” Focal at 1-2.

²³ UNE Fact Report, App. A.

switches, claims that are flatly contradicted by the vast number of CLEC switches that have already been deployed. The evidence of CLEC success should end the matter. But even if it did not, these claims are undercut by numerous other facts as well.

First, several CLEC commenters argue that it will be impossible to replicate ILEC switching networks, which are comprised of 24,000 local switches, and that absent complete duplication, switching must remain a UNE. For example, MCI assesses the costs and time it would take for CLECs to deploy switches “ubiquitously” to replicate exactly ILEC networks. MCI Herold/Stockhausen/Lathrop Decl. at ¶ 5. AT&T notes that ILECs have deployed 25 times the number of switches deployed by all CLECs and CAPs combined. AT&T at 86; *see also* CLEC Joint Commenters at 16; CoreComm Limited at 27.

These comparisons are irrelevant. As MCI concedes elsewhere in its comments, “CLECs are employing forward-looking networks that, given such advances as fiber technology, will require far fewer switches [than ILECs have deployed].” MCI at 39. The fact that ILECs collectively have deployed 24,000 switches says very little about the number of switches that CLECs need, even to provide ubiquitous nationwide local service that no ILEC comes close to matching. A great many of the ILECs’ 24,000 switches serve very small numbers of lines. More than half of all wire centers serve under 5000 lines. Nearly two-thirds of the 24,000 ILEC switches are remote switches, which typically serve even fewer lines than that. As Sprint notes, CLECs can centrally deploy their switches to reach the areas served by multiple ILEC switches. For instance, in Orlando, Sprint deployed a 5ESS that was “centrally located among eight BellSouth central offices in the Orlando area.” Sprint App. D at 1. The CLECs’ ability to employ such modern switching configurations is in fact a key competitive advantage that they have over ILECs.

Second, AT&T and MCI argue that the number of CLEC switches actually deployed exaggerates the true areas served by these switches, which they claim are concentrated geographically in urban areas. MCI at 54; AT&T Pfau Aff. at ¶ 13. CLECs have in fact deployed switches in more than 320 cities, including numerous second- and third-tier markets. MCI's own declarant admits that "MCI WorldCom and other carriers are actively deploying switches in local markets *across the country*." MCI Bryant Decl. at ¶ 24 (emphasis added); see UNE Fact Report at I-1. Moreover, the location in which a CLEC switch is deployed does not limit the area that it may serve. As AT&T itself has pointed out, a single switch can serve customers up to 125 miles away. And switch manufacturers note that new switch technology permits a single switch to serve customers up to 600 miles away. To the extent CLECs are currently serving only large customers with their switches, this is a conscious business decision to red-line vast areas with smaller business and residential customers.

Third, AT&T and MCI make similarly meritless claims of delay in installing switches. See, e.g., AT&T Pfau Aff. at ¶ 14 (claiming 9-12 months to deploy a switch); MCI at 54 & Herold/Stockhausen/Lathrop Decl. at ¶ 6 (claiming 18-24 months for a Class 5 switch). The admissions of other CLECs refute these puffed-up estimates. For example, Birch Telecom notes that deployment takes no more than nine months, and it is one of the smallest CLECs around. CompTel Tidwell Aff. at ¶ 5. Moreover, these claims of delay ignore numerous recent developments that expedite switch deployment, such as pre-fabricated central offices.²⁴ These claims also ignore the fact that CLECs are deploying many smaller switches and remote switches that take far less time to install than traditional central office switches.

²⁴ These eliminate the need for traditional commercial office space by placing the switch and the facilities used to house it into modular structures that can be transported easily and deployed anywhere.

Fourth, some commenters also complain that it is too risky for any CLEC to deploy switches before it knows who its customers are and what their traffic patterns and volumes are. They further argue that it is too expensive to deploy switches because CLECs have low initial traffic volumes. Sprint at 29-30; AT&T at 94-95; MCI at 51.

Carriers like AT&T (which designed and built the BOCs' local networks), MCI (which has 78 local networks in place), and Sprint (which is an ILEC with as much experience as the BOCs and GTE) are well able to engineer networks to meet requirements. Other CLECs also have well-trained engineers, many of whom have come from ILECs. To be sure, there is always some risk inherent in the deployment of facilities, but the risk associated with switch deployment is marginal. Indeed, the fact that CLECs have deployed numerous switches in numerous markets speaks for itself. And new switches that CLECs are deploying are very modular and scalable, UNE Fact Report at I-29 to I-30, which minimizes any concerns over engineering and obtaining initial traffic volumes. Switches are also moveable, so CLECs can transfer them to other markets.

Fifth, some commenters, in a last-ditch effort to keep switching on the list, claim that switching should be a UNE because there is no wholesale market for local switching. *See, e.g.*, Sprint at 33; CompTel at 39 & Tidwell Aff. at ¶ 5. The fact that there is no wholesale market says nothing about the lack of competition in switching nor the presence of alternatives. The breadth and depth of actual CLEC provision of switching shows that self-provision *is* a viable alternative. As noted, every CLEC in U S WEST's region since 1996 has concluded that it is not only a viable alternative, but preferable to the ILEC switching UNE. U S WEST at 43. Indeed, because switches are very modular and scalable, a wholesale market is not needed even for small CLECs to obtain their own switching on a limited basis. Moreover, the lack of a wholesale market is also explained by the availability of UNEs; a CLEC that did not want to self-provide could turn to ILECs. The fact that the ILEC UNE is more attractive than buying from other CLECs is not a

basis for unbundling under section 251(d)(2). Indeed, that was the Supreme Court's core holding striking down Rule 319. The Commission cannot, consistent with the Supreme Court's opinion, dismiss self-provision as a viable alternative. *See Iowa Utils. Bd.* 119 S. Ct. at 735.

Finally, faced with such unfavorable facts for their case, commenters advocating the switching UNE ultimately must fall back on the alleged lack of competition for *other* elements. For example, some commenters claim that CLECs cannot effectively use ILEC loops in connection with CLECs' own switches. They claim that manual hot cuts are expensive, error-prone, and too slow to accommodate the volumes needed for mass-market entry. *See, e.g., AT&T* at 86-88, 100-07; *MCI* at 53; *Sprint* at 30; *CompTel* at 40-41.

This is but another attempt at obtaining the UNE-platform by ignoring the element-by-element inquiry that the FCC must conduct to comply with section 251(d)(2) and the Supreme Court's opinion. Moreover, even if the inquiry were not wholly inappropriate, the fact that competitors have deployed more than 700 switches and are serving millions of lines (including hundreds of thousands of ILEC loops) over those switches is proof that CLECs can and will deploy their own switches, even with ILEC loops.²⁵

In any event, AT&T's and other commenters' claims about the costs and delays associated with loop provisioning and hot cuts are greatly exaggerated. In the vast majority of cases, hot cuts are made with little delay or service outages. For example, between October 1998 and April 1999, Southwestern Bell Telephone Company has completed at least 184,519 cut-overs, only 429 of which (one-fifth of one percent) experienced any delay or unnecessary service outage.

²⁵ *Sprint* points to statements by SBC's National/Local Company that it intends to use ILEC UNEs out-of-region as proof, somehow, that all ILEC UNEs, and especially switching, are required in order for a CLEC to compete. *Sprint* at 21. In fact, the National/Local Company has made clear that it plans to deploy its own switches in numerous markets around the country. The fact that the National/Local Company will in many instances be combining those switches with ILEC loops simply underscores the fact that CLEC switches and ILEC loops can be combined efficiently and economically.

Between September 1998 and April 1999, Pacific Bell completed more than 11,000 cut-overs, and did so without a problem 99.5 percent of the time. CLECs present no evidence that they have suffered any competitive harm from delays or problems with hot cuts. Nor have they even tried to take account of their own, correctable errors. Problems that do occur with loop cut-overs often are caused by CLECs themselves. *See* SBC Reply Fritts Decl. at ¶ 5 (attached hereto). Moreover, working cooperatively, ILECs and CLECs are rapidly improving the hot-cut process, shortening provisioning times, and reducing (already very rare) service outages. *See id.* at ¶¶ 4-6.

The conclusion that AT&T and other commenters reach from their inflated complaints about loop provisioning is that ILECs should be required to provide UNE platforms indefinitely. AT&T claims that ILECs have an “inherent” and permanent cost advantage, AT&T at 89 & Pfau Aff. at ¶ 19, and as a result it will always be more efficient for CLECs to obtain UNE platforms than to deploy their own switches. This is just another attempt to bootstrap switching into Rule 319 (and to save the UNE-P), even though switching does not satisfy the “necessary” and “impair” standards in a multitude of markets (if not everywhere). But this clearly is not the result that Congress intended, as it would eliminate incentives for competitors to deploy their own facilities. If a particular ILEC has problems provisioning loops that are properly classified as UNEs, the solution is to fix the problems as required under section 251(c)(3), and not to embrace these problems (and assume their indefinite continuation) as a basis for subsidized provisioning of ILEC switching.²⁶

²⁶ Moreover, the FCC's own precedent reflects the principle that carriers' compliance with the law should be assumed. *See, e.g.,* Memorandum Opinion and Order, *U S WEST, Inc. and Continental Cablevision, Inc. Petition for Special Relief*, 11 FCC Rcd 13260, 13279 [¶ 41] (1996) (“no reason to assume that the petitioners will fail to comply with their obligations under state and federal law”); Memorandum Opinion and Order, *Application of Univision Holdings, Inc.*, 7 FCC Rcd 6672, 6683 [¶ 48 n.45] (1992) (“We assume compliance” with “basic obligation to present programs responsive to the issues confronting . . . cities of license.”); Order, *Furnishing of Customer Premises Equipment and Enhanced Services by AT&T*, 59 Rad. Reg. 2d (P&F) 430 [¶ 8] (1985) (noting expectation “that a party, having been apprised of its obligations under the Communications Act and our rules, will comply with them”) (citation omitted).

III. Signaling

There is no real dispute that competitive signaling networks are widely available. The UNE Fact Report establishes that there are nearly a dozen efficient providers of signaling, and the CLECs do not dispute these facts. Instead, commenters try to diminish the significance of these alternatives by stating – without factual support – that they are inferior. For example, MCI baldly asserts that it would be discriminatory and inefficient to require CLECs to obtain signaling from such providers, MCI at 60, but offers no reasons why. *See also* ALTS at 58; CompTel at 44; Cox at 35-36. CompTel very misleadingly cites the *Local Competition Order*, 11 FCC Rcd at 15740 [¶ 482], to support its claim that the FCC has found alternative suppliers of SS7 to provide lower-quality service. But the only FCC finding in paragraph 482 was that alternatives *within ILECs' own network* – e.g., in-band signaling – were inferior in quality. The Commission did not consider alternative suppliers *at all*. And the fact that numerous competitors and wholesalers are offering service and CLECs are buying it clearly proves that alternative suppliers offer viable substitutes to ILEC signaling.

MCI raises the additional point that, even where CLECs have their own SS7 networks, they need unbundled access to ILECs' SS7 networks to complete calls. MCI at 58-60. This is simply untrue. CLECs that interconnect their own SS7 networks with ILEC SS7 networks can complete calls. They do not need *unbundled access*, just *interconnection*. And ILECs freely interconnect their SS7 networks with other carriers. Certainly, there is no evidence to the contrary.

IV. Interoffice Transport

A. Dedicated Transport

Several commenters, including AT&T, MCI, and Sprint, acknowledge, as the FCC has in the past,²⁷ that there are alternative providers of dedicated transport in many areas.²⁸ They recognize that this transport “is closely analogous, if not identical to, transport UNEs.” Sprint Runke Decl. at ¶ 3. CLECs are indeed deploying fiber to and from a multitude of wire centers, and have been for a long time.²⁹ *See* Ohio PUC at 10 (concluding, based on a recent data request, that “dedicated transport is available, in many geographic areas in Ohio, to CLECs outside ILEC’s network both through other non-incumbent carriers (CAPs, IXCs, and various CLECs) and through self-provisioning”). Since 1996 alone, 60 CLECs have constructed fiber networks, and total CLEC fiber deployment now includes more than 108,000 route-miles serving 289 cities. *See* 1999 CLEC Report at Ch. 1, p. 10; UNE Fact Report at II-6. CLECs have deployed fiber in all the major metropolitan areas and in the overwhelming majority of second- and third-tier markets. *See* UNE Fact Report at II-6.

Despite the overwhelming and uncontradicted evidence of competitive transport in many areas, AT&T, MCI, Sprint, and other commenters argue that transport should be unbundled in *all* areas. They claim that transport is not yet ubiquitous enough, and that the costs and delay associated with collocation and rights-of-way are major obstacles to deploying additional

²⁷ *See* UNE Fact Report at II-2 to II-3.

²⁸ *See* AT&T at 122 (AT&T gets 18 percent of its transport from competitive providers); Sprint at 31 (“Competitive providers of dedicated transport have been in the market for a decade now.”); MCI Bryant Decl. at ¶ 10 (“Many cities across the country have multiple competitive access providers (“CAPs”) in operation, some of which have built extensive urban fiber optic networks.”); Sprint Runke Decl. at ¶ 8 (“43% of Sprint LDD’s DS3 dedicated access customers, who are able to choose their access provider, have selected a CAP.”).

²⁹ The Commission observed as early as 1994 that “interconnectors now are able to provide special access and switched transport transmission services in competition with the LECs.” Third Report and Order, *Expanded Interconnection with Local Telephone Company Facilities*, 9 FCC Rcd 2718, 2719 [¶ 4] (1994).

competitive transport facilities. *See, e.g.*, AT&T at 111-21; MCI at 63, 65; Sprint at 33; ALTS at 50; Covad at 45. In short, AT&T, MCI, Sprint, and others would have the Commission believe that their deployment of transport fiber – along with the deployment of fiber by at least 50 other CLECs³⁰ – is, in essence, a fluke that is incapable of repetition. Despite the thousands of miles of fiber that they and other CLECs have deployed, they would have the Commission believe that they are not honest, efficient competitors, and therefore they should not be the benchmark.

Even if such claims were true – and they most clearly are not – that would not justify making transport a UNE in all areas, but only in those areas where competitive alternatives are not yet available. The FCC must adopt a standard that reflects the variation in available alternatives and avoids excessive unbundling.

The standard proposed by SBC and other ILECs would do exactly that.³¹ SBC's standard would eliminate transport as a UNE in dense wire centers (serving 40,000 or more access lines) with one or more collocated CLECs, because in these wire centers it can be empirically demonstrated that competitive interoffice transport is feasible. UNE Fact Report, Ch. II. In all BOC and GTE service territories, a total of 1164 wire centers meet this definition, representing nine percent of all BOC/GTE wire centers. *See* UNE Fact Report at II-8, Table 2. This standard is indeed consistent with – in fact, more conservative than – commenters' own claims as to where competitive transport exists today. For example, MCI admits that it “can self-provision transport to just over 400 ILEC end offices” and “purchase transport from other CLECs and CAPs to reach approximately 1200 additional end offices.” MCI at 64. AT&T accepts that “a truly competitive market for third-party transport” exists in any market where there is at least one transport provider

³⁰ 1999 CLEC Report, at Ch. 6, pp. 7-8.

³¹ MCI notes that “ILECs of course are in the best position to know where CLECs have chosen alternative providers, because they will not have CLEC business in those locations. They also will know where alternative transport exists, since it will be connected to their networks.” MCI at 66.

other than the ILEC “capable of providing complete coverage to a large geographic area.” AT&T at 122 n.231. AT&T further admits that it gets 18 percent of its transport from competitive providers. AT&T at 122. Covad acknowledges that it gets 16 percent of its transport from competitors. Covad at 45.

CLEC complaints about the inability to deploy fiber obviously do not apply where CLECs have actually deployed fiber. And, under SBC's proposed standard, the transport UNE would be eliminated *only* where fiber *already* has been deployed. CLEC complaints about collocation are also misplaced, because ILECs have an obligation to provide collocation under section 251(c)(6). If ILECs violate that duty, CLECs have a direct remedy. Moreover, neither obtaining collocation nor deploying fiber is nearly as difficult as commenters suggest.³² The very fact that CLECs have obtained collocation in more than 1650 ILEC offices, and have deployed more than 108,000 miles of fiber prove this beyond serious dispute. UNE Fact Report at II-8, Table 2; 1999 CLEC Report at Ch. 1, p. 10. Moreover, spurred by the new FCC rules, collocation is getting easier, cheaper, and quicker all the time. And fiber is getting cheaper and cheaper to deploy and has become a commodity that CLECs can purchase in a rapidly growing wholesale market.³³

³² AT&T's claims regarding problems with negotiating with municipalities are based on particularly frugal evidence. AT&T's Beans/Harris/Stith affidavit describes problems with a single city – Dearborn, Michigan – stating, without support, that other municipalities present problems, too. AT&T at 117-18 & Beans/Harris/Stith Aff. at ¶¶ 11-19.

³³ Some CLECs try to claim that interoffice transport should be a UNE because a wholesale market for interoffice transport has not developed. ALTS at 51-52. This is contradicted by several other CLECs, including AT&T and Sprint, which acknowledge in their comments that they are purchasing transport from alternative suppliers. AT&T at 21; Sprint at 31-34. Indeed, it is indisputable that there is a large wholesale market for dark fiber, which is the primary input needed to provide interoffice transport. UNE Fact Report at II-4 to II-5. Even if such a wholesale market did not exist, that would say nothing about available alternatives to the ILEC network because self-provision is also a viable alternative.

B. Dark Fiber

Several commenters request dark fiber transport facilities (or ask that dark fiber be included in the definition of “loop”). *See, e.g.*, AT&T at 121 n.228; ALTS at 5; CompTel at 2, 32; CLEC Joint Commenters at 25-26; RCN at 24-25. These commenters fail, however, to justify their requests with market facts.

SBC and the other commenters, in contrast, have definitively established that dark fiber is as available to CLECs as it is to ILECs. *See, e.g.*, UNE Fact Report at III-26 to III-28 & Table 8; UTC at 1, 3 (explaining that dark fiber is widely available from other sources at or near cost). There is an ever-growing wholesale market for dark fiber, with more than a half-dozen suppliers. Moreover, many utility companies are deploying fiber, either on their own or in alliance with CLECs.

And despite commenters' claims that CLECs need unbundled access to ILEC dark fiber, the market reality is that CLECs have a myriad of options outside the ILEC network. A host of CLECs are *already* purchasing fiber from a multitude of sources. Indeed, the very commenters that ask for unbundled dark fiber – including AT&T, Hyperion, and RCN – are themselves already obtaining fiber from alternative sources. *See* UNE Fact Report at III-27, Table 8. Several CLECs, moreover, have long-term plans, worth millions of dollars, to continue such arrangements with alternative providers. *See id.* This actual market behavior by CLECs trumps the unsubstantiated claims made by the commenters in this proceeding.

C. Shared Transport

Several commenters ask the Commission to provide shared transport as a UNE. As an initial matter, shared transport is not an “unbundled” network element under section 251(c)(3). In *AT&T v. Iowa Utilities Board*, the Commission successfully argued that the Eighth Circuit erred in interpreting “unbundled” to mean physically separated. The Supreme Court adopted the

Commission's argument that two physically connected network elements are "unbundled" if a new entrant has the ability to acquire one of the elements but not the other. 119 S. Ct. at 737. Shared transport, then, is not an "unbundled" network element because a requesting carrier does not have the option of obtaining shared transport without also taking local switching.³⁴

Thus, to require "shared transport," the Commission must first determine that *both* switching and transport independently meet the "impair" standard of section 251(d)(2). As discussed above, switching should not be a UNE in many (if not all) geographic markets. As a consequence, ILECs cannot be required to provide shared transport in these markets. *See* Ohio PUC at 11 (arguing that, because switching should not be a UNE, "the provision of shared transport as a UNE would be rendered academic"). Similarly, ILECs cannot be required to provide shared transport in any market in which they are not required to provide transport, and, again, there are many such markets.

Moreover, even in markets where switching and transport should be unbundled, shared transport still does not satisfy section 251(d)(2) because unbundled switching and dedicated transport give the CLECs all they need to compete. This is true even at early stages of entry. Thus, CLECs do not need the added subsidy of "shared" transport because dedicated transport already gives them a meaningful opportunity to compete in markets where they obtain unbundled switching.

V. Operator Services and Directory Assistance

There are more than 30 efficient CLECs providing their own OS and DA services or reselling the services of non-ILECs, including numerous wholesalers. UNE Fact Report at IV-2,

³⁴ Third Order on Reconsideration and Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Radio Service Providers*, 12 FCC Rcd 12460, 12488 [¶ 47] (1997).

Table 1; IV-3, Table 2; IV-5, Table 3; *see also* MGC at 9 (arguing that OS/DA should not be a UNE because it is “generally available from third parties in a cost effective and efficient manner”); Ohio PUC at 12 (finding that “OS/DA alternatives are readily available to CLECs”). And the necessary inputs for efficient CLECs to self-provide OS and DA – listings, computers, real estate, and operators – are as readily available to CLECs as ILECs. Faced with this conclusive factual case, AT&T was forced to acknowledge in a recent filing in this docket, that “[c]ompared with other ILEC network elements, CLECs have greater opportunity to establish, themselves or by contract, work centers for providing operator and/or directory assistance services.” AT&T White Paper at 50 (submitted Feb. 1999). Though AT&T has backpedaled a bit in its comments, it still grudgingly concedes that OS and DA “present a closer question” than other UNEs. AT&T at 16. Sprint likewise acknowledges that OS/DA is a possible exception to the UNE list. Sprint at 28.³⁵ ALTS and e.spire do not request the unbundling of OS/DA at all.

The scattered arguments that the FCC should make OS/DA a UNE – despite the widespread competition for such services by efficient CLECs – fall into three main categories.

First, some commenters assert that the primary alternatives to ILEC OS/DA are inferior to the ILECs' own services. *See, e.g.*, AT&T at 130; MCI at 70-74. Any difference in quality is certainly not so great as to justify making OS/DA a UNE. The fact, undisputed in the comments, that there are numerous wholesale providers of OS/DA that both CLECs and even ILECs rely on belies claims that these providers offer inferior service. The very existence of these competitors – not to mention their success in the marketplace – is conclusive proof that they provide services at least comparable (taking account of price) to those of the ILECs.

³⁵ Sprint claims the only reason to keep OS/DA as UNEs is “because they are checklist items in § 271.” Sprint at 28. As discussed above, this argument has no basis in the structure or language of the 1996 Act.

Second, several commenters complain that some ILECs (including SBC) do not permit access to their databases “in bulk,” but instead permit access only on a “by database dip” or “query-by-query” basis. *See, e.g.*, MCI at 71-74; AT&T at 131-33. In reality, SBC and other ILECs do provide complete and nondiscriminatory access to directory assistance listing information in readily accessible format, pursuant to 47 C.F.R. § 51.217(c)(3)(ii). MCI, for instance, has been receiving this information from Pacific Bell for more than two years. SBC also offers several forms of direct connectivity to the directory assistance database, although no CLEC has, to date, requested this method of access. These forms of access to the DA listing information and DA database are fully consistent with the FCC’s rules.

The real dispute here is not about the manner in which SBC and other ILECs provide such access, but rather about the price, terms of use, and compensation to other LECs for use of their listing information. SBC and several other ILECs charge CLECs for each listing provided, whereas other ILECs charge CLECs a one-time fee for unlimited access. But, under both schemes, rates are just, reasonable, and nondiscriminatory, and access to the listing information is identical. AT&T complains that ILECs charge between \$.02 and \$.06 per listing, which represents a 500 percent mark-up over costs. MCI suggests that the ILECs provide complete DA data at cost-based rates, but this proposal fails to recognize the added value of the listing information for national services and the need to compensate appropriately other LECs and CLECs for the use of their information. Apart from being greatly exaggerated,³⁶ AT&T fails to mention that its own nationwide directory assistance service charges \$.95 for two listings – a

³⁶ AT&T bases its cost estimate on Bell Atlantic-New York’s tariffed rate for one-time access to its entire directory database, from which AT&T extrapolates a per-listing cost. AT&T assumes that Bell Atlantic’s cost structure in New York – one of the most concentrated and populous states in the country – yields the “maximum” possible cost for service. In reality, Bell Atlantic’s cost structure in New York is most certainly lower (far lower) than most other states, where the costs of databases would be the same as in New York but the number of listings served by each database would be greatly reduced, yielding a much

mark-up of more than 700 percent above the price that AT&T pays for such listings if it obtains them from an ILEC.³⁷ MCI charges end users up to \$1.40 for directory assistance – a mark-up of more than 1500 percent above the price that MCI pays for a listing obtained from an ILEC.³⁸ Moreover, these carriers should acknowledge the significant added value of the listing information when customers *anywhere in the country* could dial AT&T's or MCI's national directory assistance services. This listing information is not only being used to compete with the ILECs for local services, but it is also being used on a national basis. In fact, a caller does not even have to be an AT&T or MCI subscriber to obtain these national services. This stands in sharp contrast to the local and national directory assistance services offered by SBC and other ILECs, which are offered exclusively to callers within the ILEC's local exchange serving area.³⁹

Third, several commenters complain about the ability to obtain customized routing, which is an issue only where a CLEC seeks to obtain unbundled switching from an ILEC in conjunction with the CLECs' own OS/DA platform. AT&T at 126-28; MCI at 71-74. But the FCC already requires ILECs to implement customized routing, *see Local Competition Order*, 11 FCC Rcd at 15709 [¶ 418], and the FCC cannot presume that ILECs will willingly violate these rules. Indeed, AT&T acknowledges that SBC has implemented two FCC-recognized methods of customized routing – line class codes and AIN.⁴⁰ *See* AT&T at 127-28. AT&T merely states that it takes time

higher per-listing cost.

³⁷ *See* AT&T News Release, *Vacation Travelers Stay Tethered to Work and Home*, Apr. 29, 1998.

³⁸ *See* MCI WorldComm, MCI Telecommunications Corporation Supplement No. 152 to PA. P.U.C. Tariff No. 2, available at: <http://www.wcom.com/tools-resources/pennsylvania_tariffs/MCIT.PA.html>.

³⁹ AT&T and MCI also use third-party database providers to supplement the listing data received from the ILECs. Similarly, SBC and other ILECs utilize third-party databases to access listing information for other states outside their franchise territories.

⁴⁰ Pacific Bell has engaged in extensive efforts to offer the customized routing requested by the CLECs. In 1999, the California Public Utilities Commission conducted workshops to determine the types of customized routing requests that should be tested. As a result of those workshops, Pacific Bell committed its resources to testing specific customized routing options requested by AT&T and MCI. At the request of

to implement these solutions but does not – indeed cannot – complain that these solutions are not yet in place. With respect to MCI's complaints that ILECs should implement Feature Group D signaling, this kind of customized routing is not technically feasible in all end-office switches.

As a final matter, it is worth noting that the commenters do not present even a shred of evidence regarding why competitors need access to OS/DA as a UNE, when section 251(b)(3) and Rule 51.217 guarantee CLECs nondiscriminatory access to ILECs' OS and DA databases and services. AT&T merely states (in a footnote) that the UNE is cheaper, and therefore essential, *see* AT&T at 126 n.244, but this clearly is an inadequate basis to make OS/DA a UNE. Indeed, in light of the widespread competitive alternatives to ILEC OS and DA services, there is no basis for such a finding. As MCI states, it “provides its own DA service wherever it has deployed its own switch and has access to ILEC DA databases.” MCI Miller Decl. at ¶ 6.

VI. Advanced Services

The requests for additional UNEs such as DSLAMs, packet switches, and other electronics, *see, e.g.*, MCI at 50; Level 3 at 22-23, fail to address the fact that competition in the advanced services market is currently thriving without the inclusion of these electronics as UNEs. The equipment is readily available to ILECs and CLECs alike. Indeed, the CLECs' own trade association acknowledges in its comments that “DSLAMs are ‘off the shelf’ technology available to ILECs and all other carriers from a number of vendors.” ALTS at 18 n.40. Similarly, the data CLECs themselves acknowledge that this equipment is widely available, Covad Shipley/Rauschenberg Aff. at ¶¶ 4-5; Northpoint at 18; Rhythm NetConnection at 24-27, and that there is no need for it to be unbundled. Rhythm NetConnection at 24-27.

AT&T, Pacific Bell has tested and made available translation of 411 to 900 numbers and intralata FNPA-555-1212 as part of customized routing of directory assistance. At MCI's request, Pacific Bell investigated using AIN technology to customize route MCI's calls to its OS/DA platform. MCI failed to provide information needed to perform a test of the AIN capability and has not pursued the issue further.

Extending UNEs to these elements would stifle the deployment of these services to consumers because CLECs will opt to free-ride off ILEC electronics instead of investing in their own or exploring innovative alternatives. Similarly, ILECs will lack the incentive to develop new technology because they will bear all the risk, while any successful invention will be subject to forced sharing. *See* The Information Technology Industry Council at 2 (“unwarranted unbundling obligations for the electronics associated with advanced services would create economic disincentives for the ILECs to deploy advanced services”). This result would certainly undermine Congress’s objective to “encourage the rapid deployment of new telecommunications technologies.” It would also contradict the Commission’s settled practice of *not* regulating innovative services offered in competitive markets.

The Commission simply cannot reconcile unbundling elements for advanced services with its conclusion – a mere four months ago – that CLECs are ahead of ILECs in deploying broadband to residential customers and that there is no incumbency in this market.⁴¹ Thus, as the Commission concluded, efficient CLECs are not merely competing in the advanced services market, they are flourishing in it. As the Commission observed, it would be “premature to conclude that there will not be competition in the consumer market for broadband. The preconditions for monopoly appear absent.”⁴² Rather, the market has the potential to “accommodate different technologies such as DSL, cable modems, utility fiber to the home, satellite, and terrestrial radio.”⁴³

⁴¹ *See, e.g.*, Report, *Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, CC Docket No. 98-146, FCC 99-5 [¶ 48 n.103] (rel. Feb. 2, 1999) (“the preconditions for monopoly appear absent” in the “last mile” of the advanced services market); *id.* (“[N]o competitor has a large embedded base of paying residential consumers” and there is no “indicat[ion] that the consumer market is inherently a natural monopoly.”); *id.* ¶¶ 53, 56, 58 (ranking CLECs ahead of ILECs in last-mile deployment of broadband to residential customers).

⁴² *Id.* ¶ 48.

⁴³ *Id.*

Several opponents seek sub-loop unbundling to provide xDSL services. Sprint at 35-39; KMC at 19-20; Level 3 at 17-18; McLeod at 6. As SBC pointed out in its comments, sub-loop unbundling presents a variety of technical, safety, security, and maintenance issues. And the risks of sub-loop unbundling are not justified by the need to provide xDSL services because CLECs are *already* providing advanced services without such superior access. Indeed, CLECs are not just providing xDSL, they are, according to the Commission itself, leading ILECs in broadband deployment to residential customers. And, with the Commission's new collocation order, CLECs have even greater access to collocate their own equipment for the provision of advanced services.⁴⁴ CLECs need nothing more pursuant to section 251(d)(2).

VII. Platforms

Several opponents seek extended loops/EEL, a combination of loops, switching, and interoffice transport. CompTel at 47-53; Level 3 at 19-20; McLeod at 8-9. Some opponents also ask for other combinations short of the complete UNE platform. ALTS at 82-86.

As discussed at length in the Joint Reply Comments, the attempt to obtain "combined" elements where the individual elements do not satisfy section 251(d)(2) is completely at odds with the Supreme Court's decision and the 1996 Act. The determination to require unbundling must be on an element-by-element basis. If each element in a combination meets the section 251(d)(2) threshold, and the ILEC already combines the elements in its own network, then CLECs may have access to the pre-existing combination. If the ILEC does not already combine the elements, the CLEC may obtain the component elements of the combination individually and combine the

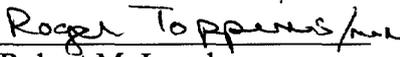
⁴⁴ For example, CLECs have the right to collocate in adjacent CEVs or similar structures, when space is legitimately exhausted in particular LEC premises. See First Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 99-48 [¶ 44] (rel. Mar. 31, 1999).

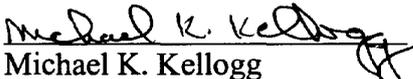
elements itself using the nondiscriminatory method(s) of access provided by the ILEC in accordance with section 251(c)(3) and the Commission's existing rules.

CONCLUSION

The Commission should reject attempts by commenters to unbundle network elements when efficient CLECs have a meaningful opportunity to compete without unbundled access to the ILEC network. Accordingly, the Commission should carefully examine the factual record and – pursuant to the goals of the 1996 Act, the language of section 251(d)(2), and the Supreme Court's opinion – require unbundling only when efficient competitors do not have viable alternatives to the ILEC network elements.

Respectfully submitted,


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June 10, 1999

ATTACHMENT

DECLARATION OF WILLIAM A. FRITTS

1. My name is William A. Fritts. I'm employed with Southwestern Bell Telephone (SWB) Company as Director-Interconnection and Collocation, and am responsible for methods, procedures and operations support for collocation and interconnection – including migration (“hot cuts”) – for the five states served by Southwestern Bell. I am also familiar with general migration procedures and conditions for Pacific Bell (PB) and Nevada Bell (NB). I have a total of 27 years of experience with Southwestern Bell, including experience in Technology Planning and Operations.

2. There are two methods for migrating an end user from one of SWB's switches to a competitor's switch – the “coordinated” hot cut (CHC) and the “non-coordinated” cut. Both types of migration involve coordination and planning to meet a scheduled deadline. In a non-coordinated cut, after the order is distributed from the Service Order Retrieval and Distribution system, the order simply flows to back office Operations Support Systems and the migration will not begin prior to the Desired Frame Due Time (DFDT) specified by the CLEC on the LSR. The migration will be completed within a 60 minute window. The CHC process requires “manual” coordination between a SWBT, PB, or NB employees and CLEC employees, including a conference call to coordinate the migration of the loop from our network to the CLEC's network. When a CLEC submits a migration request to us, the CLEC has the choice of requesting either a CHC or a non-coordinated cut. We do have guidelines that require a CHC for migrations desired outside of normal business hours or for cuts affecting 20 or more loops at the same customer premises. Conversely, orders with a migration time during business hours, and involving 19 or less loops should be handled on a non-coordinated basis. Accessible Letter CLEC98-074, September 11, 1998 explains the policy on coordinated versus non-coordinated migrations.

3. When a CHC is requested, the CLEC must specify its desired cutover time using the DFDT field and checking the CHC field on the LSR. SWB personnel are verified to be ready and available at that time. If SBC personnel are not available as requested, SWB and the CLEC work together to determine a date/time when resources are available to work the migration. All SWB personnel wait for the coordination conference call to be established before beginning the migration.

4. Since December of 1998, when the volume of CLEC migration orders began to increase dramatically, Southwestern Bell has developed new procedures to narrow the timeframe in which non-coordinated orders are worked. LSR edits have been updated to ensure that a non-coordinated cut request contains the DFDT for the migration. This enhancement was tested in the early part of 1999 with Allegiance Telecom, operating in the Dallas/Fort Worth area at the time, and was very successful. The accuracy and timeliness of migration efforts achieved a 92% success rate, and Allegiance was very satisfied with the outcome. In fact, Allegiance is still using the Southwestern Bell improved migration process, and has expanded to Houston, where it is also collocating and is or will be using this process.

5. The CHC process within SWB has also been improved. A separate group was established to handle Local Number Portability (LNP) orders that do not include a UNE loop. This has opened up the schedule available for CHC, so that more CLECs can achieve their desired conversion times than ever before. Overall, between October of 1998 and April of 1999, as an example, Southwestern Bell has performed a total of 184,519 of these conversions (CHC) with only .23% (less than one percent) of those conversions being delayed or otherwise disrupted. When problems have been experienced, they have often been the cause of a CLEC canceling an order or changing a scheduled due date within a few hours of the scheduled migration time, which can result in a customer service outage. To the extent CLECs complain that the "manual" cutover process is so slow or unreliable that ILECs should be required to provide unbundled switching, they are blowing a very small percentage of error way out of proportion. The migration processes in place are a success story – and weigh in favor of removing switching from the list of required UNEs.

6. Enhancements to the non-coordinated cut process should free up further personnel and other resources for use by CLECs and our companies so that the CHC process, used for the more complex migrations, becomes even more accurate and streamlined. Currently, according to recent data, SWB and PB are completing these migrations with a high degree of accuracy and timeliness. For the first 4 months of 1999, these companies have averaged 34351 loop migrations per month, with a 99.66 % degree of accuracy (both on substance and timeliness). And, of the small percentage of orders that may be delayed or otherwise disrupted, many are the result of CLEC error.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9th day of June, 1999.


WILLIAM A. FRIGGS

Accessible



“Coordinated Cuts regarding UNE Loop and/or Number Portability”

Date: September 11, 1998

Number: **CLEC98-074**

Contact: Southwestern Bell Account Manager

This letter is to provide Southwestern Bell Telephone Company's (SWBT) Coordinated Cut Thresholds and Application of Charges. The attached chart displays these thresholds and when applicable charges apply.

Attachment

SWBT COORDINATED CUT THRESHOLDS (Note 1)
and
APPLICATION OF CHARGES (Note 2)

		DURING NORMAL BUSINESS HOURS (Note 3)	OUTSIDE NORMAL BUSINESS HOURS
LNP Standalone	with 10 Digit Trigger	Not a coordinated cut. Charges apply if coordinated cut is requested	1+ lines - charges apply
	without 10 Digit Trigger	1+ lines considered a coordinated cut - charges do not apply	
	where existing service is Direct Inward Dialing (DID)		
Unbundled Loop	with INP	20+ lines is a coordinated cut - charges do not apply	
	with LNP		
	Standalone	19 or fewer lines does not qualify for a coordinated cut - charges apply	
INP Standalone			
INP to LNP	with 10 Digit Trigger	Not a coordinated cut. Charges apply if coordinated cut is requested	
	without 10 Digit Trigger	1+ lines considered a coordinated cut - charges do not apply	
	where existing INP service is DNRI or FlexDID/INP Direct		

Note 1: Subject to existing Interconnection Agreements

Note 2: Southwestern Bell - FCC Access Tariff #73, Section 7

Note 3: Normal Business Hours - 8:00 a.m. to 5:00 p.m. local time, Monday through Friday, excluding observed holidays